

DRAFT

MONTANA PUBLIC DEFENDER COMMISSION
2019 BIENNIUM
EXECUTIVE PLANNING PROCESS (EPP)

MAY 17, 2016 (DRAFT 5)

2019 Biennium Executive Planning Process

Commission Duties: Title 47-1-105 (3)

- Review and approve the strategic plan and budget proposals submitted by the agency.
- Review and approve any proposal to create permanent staff positions.

2019 Biennium

Executive Planning Process

There are seven deliverables to the Office of Budget and Program Planning (OBPP) as part of the EPP process:

1. A budget request
2. Agency goals and objectives
3. Draft legislation
4. Identification of program managers
5. An information technology strategic plan
6. Request for reorganizations
7. Emergency 5% reduction plan

2019 Biennium Executive Planning Process

Key Dates:

- February 26, 2016 – Agency personnel provide EPP instruction and dates of items due to the Commission.
- March to May 2016 – Two options: (1) the Commission may have its committees (Budget, Legislative and Strategic Planning) meet to develop and review detailed budget items, legislation, and reorganization plans; (2) or they can ask agency personnel to bring plans to the full Commission.
- April 1, 2016 – Agency provides any reorganization requests to OBPP.
- April 15, 2016 – Agency forwards prioritized draft legislation to OBPP.
- Before May 30, 2016 – the Commission hears budget recommendations from the Program Managers and/or Committees, approves a budget submission, and provides it to OBPP.
- June 2016 – Agency discusses draft legislation with the Interim Law and Justice Committee.
- Before August 31, 2016 – The Commission approves final budget proposals and develops a priority ranking. This product is submitted to OBPP. Goals and objectives are also submitted.
- Between April and September, 2016 – The Agency and Commission have discussions with OBPP and the Governor's policy staff about budget proposals, legislation, and reorganizations.
- November/December, 2016 – Governor submits a budget to the 2017 Legislature.
- January – April 2017 – The Legislature conducts hearings and approves an appropriation and legislation.

2019 Biennium Executive Planning Process – The Budget Proposals

STEP 1: PREPARE A PRESENT LAW BUDGET

- The 2015 Legislature made the agency's funding "one-time only." The agency will need to prepare a present law based budget. We expect to use as a starting point the resources authorized for FY 2016 and build from there.
- Resources include FTE, rents, contractor costs, supplies, travel, training, etc.
- We assume that these will be in the form of change packages.

2019 Biennium Executive Planning Process – The Budget Proposals

STEP 2: OTHER EPP ITEMS

- Will there be increases/decreases requested by other agencies that provide services to OPD and will OPD be funded for these increases?
- Will there be general pay increases for our employees?
- Will OPD receive inflation/deflation adjustments for certain purchases?
- These amounts are traditionally added by the Executive during the budget process.

2019 Biennium Executive Planning Process – The Budget Proposals

STEP 3: CHANGE PACKAGES

- These are separate budget requests that are developed by the agency under the direction of the Commission and submitted to the Executive.
- The Executive can approve them as is, adjust them, or disapprove them.
- These are items that were not in the funding for FY 2016.

2019 Biennium Executive Planning Process – The Budget Proposals

STEP 4: FUNDING

- The agency determines what kind of funding is needed to support the entire budget submission.
- The agency has traditionally used:
 - General Fund (mostly income and property taxes)
 - State Special Revenue (fees from clients)

2019 Biennium Executive Planning Process – The Budget Proposals

STEP 5: EXECUTIVE SETS TARGETS

- The Executive estimates the amount of revenue available during the biennium for its use and sets allocations or targets for each agency.
- OBPP meets with agency representatives to communicate the target and speak about any operational challenges.

2019 Biennium Executive Planning Process – The Budget Proposals

STEP 6: EXECUTIVE SENDS A BUDGET FOR THE BIENNIUM TO THE
LEGISLATURE

2019 Biennium

Executive Planning Process – The Budget Proposals

STEP 7: THE LEGISLATURE MEETS TO REVIEW AND APPROVE OR ADJUST THE EXECUTIVE'S BUDGET

- The Legislature forms Appropriation and Budget Subcommittees to hear testimony.
- Testimony is heard from many sources including: the Executive's representatives, commissioners and board members, elected officials, agency directors and their employees, vendors, contractors, interested parties, and the general public.

2019 Biennium Executive Planning Process – The Budget Proposals

STEP 8: THE LEGISLATURE ALSO HEARS NEEDS FROM AGENCIES FOR
SUPPLEMENTAL FUNDING FOR THE PRIOR BIENNIUM

AGENCY FUNDING HISTORY

Funding History – 2007 Biennium

- Agency began operations on July 1, 2006 (FY 2007)
- The Commission and agency were formed during FY 2006
- 2005 Legislature provided the agency's first funding:
 - FY 2006 \$0.6 million
 - FY 2007 \$13.8 million and 90.25 FTE
- This funding was based on current costs that entities paid for public defense prior to the establishment of the system, plus the establishment of a central office for system administration.

2007 Biennium – Actual Expenditures

- FY 2006 - the agency expended about \$800,000 or \$200,000 more than funded.
- FY 2007 – the agency expended about \$19.4 million or about \$5.6 million more than funded.
- During FY 2007 the agency was approved to bring on 192.5 FTE or 102.25 more than the original 90.25 to support its strategic plan.
- The agency reported 25,549 new cases entering the system – there was no accurate information for the number of cases worked by the prior entities.

The 2009 Biennium

- The agency received its entire funding request from the executive and legislative branches of:
 - \$19.8 million for FY 2008 with 192.50 FTE, and
 - \$20.1 million for FY 2009
- This funding was based on the information in the Agency Strategic Plan as approved by the Commission.

2009 Biennium – Actual Expenditures

- FY 2008 - the agency expended all of its \$19.8 million appropriation.
- The agency reported 26,556 new cases entering the system which is a 4% increase from FY 2007
- FY 2009 – the agency expended about \$20.5 million or about \$400,000 more than funded.
- The agency reported 27,898 new cases entering the system which is a 5% increase from FY 2008
- During the biennium the agency was approved to have 192.50 FTE. Near the end of the biennium the agency was approved to use 8.00 “modified” or temporary FTEs to handle the case load growth and system stress.

The 2011 Biennium

- The Commission submitted to the Executive:
 - \$24.4 million for FY 2010 and 217.50 FTE, and
 - \$24.5 million for FY 2011 and 217.50 FTE.
- This was an increase of about \$4.7 million and 25.00 new FTE over the FY 2008 base budget.

The 2011 Biennium

- The Executive approved:
 - \$20.4 million for FY 2010 and 200.50 FTE, and
 - \$20.4 million for FY 2011 and 200.50 FTE.
- This was an increase of about \$600,000 and 8.00 new FTE over the FY 2008 base budget. It also included an additional 3% vacancy savings that cost the agency about \$400,000 per fiscal year.
- However, it was \$4 million less than requested.

The 2011 Biennium

- The Legislature cut the Executive approved budget to:
 - \$20.0 million for FY 2010 and 200.50 FTE, and
 - \$20.0 million for FY 2011 and 200.50 FTE.
- This was an increase of about \$200,000 and 8.00 new FTE over the FY 2008 base budget BUT about \$500,000 less than was expended in the most current fiscal year (FY 2009).
- It was also \$4.4 million less than the agency proposed budget.

The 2011 Biennium

- During FY 2010 and FY 2011 the agency needed to fund past promised pay increases to its employees, pay increased amounts to other state agencies for services, make the modified employees permanent, and pay for the Executive-approved Attorney Union pay ladder.
- The agency came in about \$1.8 million short for FY 2011 which was covered by supplemental funding and other reserves.

The 2013 Biennium

- The Commission submitted to the Executive:
 - \$24.3 million for FY 2012 and 217.50 FTE, and
 - \$24.7 million for FY 2013 and 217.50 FTE.
- This was an increase of about \$3.7 to \$4.1 million and 17.00 new FTE over the FY 2010 base budget.

The 2013 Biennium

- OBPP approved the following for inclusion in the Governor's budget:
 - \$21.8 million for FY 2012 and 216.50 FTE, and
 - \$21.7 million for FY 2013 and 216.50 FTE.
- This was an increase of about \$1.2 million and 16.00 new FTE over the FY 2010 base budget.

The 2013 Biennium

- The 2011 Legislature approved the following:
 - \$23.0 million for FY 2012 and 208.50 FTE, and
 - \$23.0 million for FY 2013 and 209.50 FTE.
- This was an increase of about \$2.4 million and 8.00 to 9.00 new FTE over the FY 2010 base budget.
- This budget increase included \$800,000 one time money for FY 2012 and \$700,000 for FY 2013. Of this \$500,000 and \$400,000 were to pay for capital defense (death penalty cases) and \$300,000 per year was to pay for technology purchases and support increased contractor costs.
- The agency came in about \$3.4 million short for the biennium which was covered by supplemental funding and other reserves.

The 2015 Biennium

- The Commission submitted to the Executive:
 - \$34.8 million for FY 2014 and 286.50 FTE, and
 - \$34.1 million for FY 2015 and 286.50 FTE.
- This was an increase of about \$12.6 million and 77.00 new FTE over the FY 2012 base budget.
- During a five year period, the agency experienced a 3.7% average increase in new cases. Caseloads of the majority of FTE attorneys were above target levels.

The 2015 Biennium

- OBPP approved the following for inclusion in the Governor's budget:
 - \$27.0 million for FY 2014 and 246.50 FTE, and
 - \$27.2 million for FY 2015 and 246.50 FTE.
- This was an increase of about \$5.0 million and 37.00 new FTE over the FY 2012 base budget.

The 2015 Biennium

- The 2013 Legislature approved the following:
 - \$26.4 million for FY 2014 and 217.50 FTE, and
 - \$26.5 million for FY 2015 and 217.50 FTE.
- This was an increase of about \$5.0 million and 8.00 new FTE over the FY 2012 base budget.
- This budget increase included:
 - \$500,000 one time money for capital defense (death penalty cases).
 - \$1.3 million per year to fund the attorney career ladder.
 - \$1.8 million per year for additional contract expense.
- The agency came in about \$7.2 million short for the biennium which was covered by supplemental funding and other reserves.

The 2017 Biennium

- The Commission submitted to the Executive:
 - \$ 42.5 million for FY 2016 and 307.00 FTE, and
 - \$ 42.6 million for FY 2017 and 307.00 FTE.
- This was an increase of about \$14.0 million and 89.5 new FTE over the FY 2014 base budget.
- During a five year period, the agency experienced a 4.2% average increase in new cases. Caseloads of the majority of FTE attorneys were above target levels.

The 2017 Biennium

- OBPP approved the following for inclusion in the Governor's budget:
 - \$34.0 million for FY 2016 and 256.00 FTE, and
 - \$34.2 million for FY 2017 and 256.00 FTE.
- This was an increase of about \$5.5 million and 38.50 new FTE over the FY 2014 base budget.

The 2017 Biennium

- The 2015 Legislature approved the following:
 - \$32.9 million for FY 2016 and 235.94 FTE, and
 - \$32.9 million for FY 2017 and 235.94 FTE.
- This was an increase of about \$6.5 million and 18.44 new FTE over the FY 2014 base budget.
- This budget increase included:
 - \$250,000 per year one time money discretionary funding.
 - \$1.8 million per year for additional contract expense.
 - \$638,000 per year for the non-attorney salary market adjustment.

The 2017 Biennium

- The Governor's Office provided additional funding for the following items:
 - \$1.2 million for FY 2016 and
 - \$1.3 million for FY 2017 to hire additional FTE.
 - \$600,000 per fiscal year to fund the attorney career ladder.
- TOTAL FUNDING (not including 50 cent per hour wage increase)
- FY 2016 \$34.7 million
- FY 2017 \$34.8 million

Reorganizations

The Commission approved the reorganization on March 22

The reorganization was approved by the Governor on April 1

Positions and funds have been transferred to Program 4

2019 Biennium

PRESENT LAW BUDGETS

AND

CHANGE PACKAGES

FOR

ALL PROGRAMS

2019 Biennium Issues for All Programs

Programs are referred to as P1, P2, P3, and P4

Global issues facing the agency:

1. Rising caseloads – P1 and P3 about 5 to 6% or 1,850 more new cases/year for FY 2015 and 2016
2. Imbedded in this increase is DN growing at 20 to 30% or 850 more new cases/year
3. FY 2016 estimated case increase in P2 is unknown at this time, however, FY2015 was 7% or 17 more new appeals/year.
4. 5-year average case growth for P1 & P3 has been 3.5% for non DN cases and 10% for DN. 5-year average case growth for P2 is 9%.
5. The most current attorney case weights for P1 & P3 shows 57,600 excess hours which converts to a need for an additional 39 FTE attorneys to work this excess. The additional admin and investigator support is 12 FTE and 5 FTE, respectively. The total resource need is 56 FTE.
6. Year to date turnover is mostly in P1: Attorney 23%, Admin 29%, Investigator 21%
7. Increased contractor costs to work the increased caseloads is creating a shortfall mostly in P3 at \$3.5 million.
8. Non-budgeted death penalty expenditures year to date are \$80,000.
9. Task Force outcome is currently unknown

2019 Biennium

Idea: think in terms of 5 years to estimate future resource needs: FY 2015 through FY 2019

1. One year back or FY 2015: be able to answer audit questions plus understand expenditure trends to predict future resource needs. What happened in FY 2014? P1 and P3 had a 6% growth all cases with imbedded 30% growth in DN. P2 has a 7% growth in appeals.
2. Current year or FY 2016: be able to answer audit questions plus understand expenditure trends to predict any shortfall for the biennium and predict resource needs for the next biennium. What happened? P1 and P3 expect to have a 5% growth all cases with an imbedded 20% in DN cases. Information for P2 is not yet available.
3. Next fiscal year or FY 2017: be able to understand expenditure trends to identify any shortfall and predict future resource needs. What may FY 2017 look like?
 - A. Current growth of 5 - 6% or historical of 3.5%?
 - B. \$3.5 million shortfall or more/less?
 - C. What will CWS and turnover be?
4. Next budget cycle or FY 2018 and FY 2019: **This is the time period we are dealing with for this EPP process.**

2019 Biennium

PRESENT LAW BUDGETS

FOR

ALL PROGRAMS

Present Law Budget – Program 4

Personal Services and FTE counts for each department under the Commission/Chief Administrator Program

Department	FTE	Total
Administration	2.00	193,205
Accounting	5.00	322,235
Information Technology	4.00	350,607
Contract Management	2.00	169,423
Training	3.00	296,741
Case Management	1.00	67,315
Human Resources	1.75	137,800
Investigative Supervision	1.00	87,758
	19.75	\$ 1,625,084

Present Law Budget – Program 4

Operating costs for each type of expenditure in the Commission/Executive Director Program. This presentation is not by department.

Travel \$99,835 (Commission and Training travel costs and motor pool)

Office costs \$132,640 (PC and copier purchases for the system and supplies)

Misc. costs \$248,058 (annual case management fee, Lexis and consulting)

ITSD costs \$54,821 (network and software hosting costs)

Communications \$10,750

Annual costs \$226,515 (insurance, Leg. audit, work comp, system use fees)

Rent \$136,032 (Butte, Missoula annex, storage vault, and Bozeman training)

Total \$908,652

Present Law Budget – Program 4

CP A4: Summary

Personal Services \$1,625,084 and 19.75 FTE

Operating costs \$908,652

Total \$2,533,736 and 19.75 FTE

Present Law Budget – Program 1

Personal Services and FTE counts for each type of position in the Public Defender Program.

Title	FTE	Total	
Chief Public Defender	1.00	137,601	
Regional Deputy	11.00	1,340,593	
Lawyer -Managing Attorney	2.00	219,232	
Lawyer - Supervisor	2.00	217,645	
Lawyer	112.00	10,898,140	
Administrative Assistant	16.00	1,010,651	
Administrative Assistant	2.00	106,620	
Paralegal Legal Assistant	5.00	277,845	
Legal Secretary	38.00	1,977,387	
Secretary	2.00	83,665	
Resource Advocate	3.00	173,826	
Crime Investigator	19.00	1,458,352	
	213.00	\$ 17,901,557	

Present Law Budget– Program 1

Operating costs for each type of expenditure in the Public Defender Program

Contract \$3,873,300 (attorney, transcripts, experts, mental health/CD evals)

Travel \$162,670 (motor pool and client-based travel)

Office costs \$212,291 (office supplies, equipment, and postage)

Misc. costs \$48,557 (temp services and Lexis)

ITSD costs \$474,272 (network, long distance and software hosting costs)

Communications \$104,950

Annual costs \$51,948 (bar dues and notary licenses)

Rent \$950,943 (15 region and satellite office leases under Program 1)

Total \$5,878,931

Present Law Budget – Program 1

CP A1: Summary

Personal Services \$17,901,557 and 213.00 FTE

Operating costs \$5,878,931

Total \$23,780,488

Present Law Budget – Program 2

Personal Services and FTE counts for each type of position in the Appellate Defender Program

Title	FTE	Total	
Chief Appellate Defender	1.00	125,243	
Lawyer	11.50	1,124,340	
Admin. Asst.	2.00	122,409	
Admin. Asst.	1.00	55,039	
	15.50	\$ 1,427,031	

Present Law Budget – Program 2

Operating costs for each type of expenditure in the Appellate Defender Program

Contract \$350,000 (attorney and transcripts)

Travel \$750 (motor pool and client-based travel)

Office costs \$13,927 (office supplies, equipment, and postage)

Misc. costs \$13,964 (Westlaw)

ITSD costs \$37,068 (network, long distance and software hosting costs)

Communications \$6,700

Annual costs \$4,950 (bar dues)

Rent \$69,439 (Helena and Missoula)

Total \$496,798

Present Law Budget – Program 2

CP A2: Summary

Personal Services \$1,427,031 and 15.50 FTE

Operating costs \$496,798

Total \$1,923,829

Present Law Budget – Program 3

Personal Services and FTE counts for each type of position in the Conflict Coordinator Program

Title	FTE	Total	
Conflict Coordinator	1.00	123,638	
Lawyer	7.00	714,793	
Admin. Asst.	1.00	50,937	
	9.00	\$ 889,368	

Present Law Budget – Program 3

Operating costs for each type of expenditure in the Conflict Coordinator Program

Contract \$6,478,437 (attorney, transcripts, experts, mental health/CD evals)

Travel \$22,577 (motor pool and client-based travel)

Office costs \$19,766 (office supplies, equipment, and postage)

Misc. costs \$1,920 (Lexis)

ITSD costs \$22,854 (network, long distance and software hosting costs)

Communications \$1,400

Annual costs \$3,160 (bar dues)

Rent \$15,163 (Helena)

Total \$6,565,277

Present Law Budget – Program 3

CP A3: Summary

Personal Services \$889,639 and 9.00 FTE

Operating costs \$6,565,277

Total \$7,454,916

Present Law Budget – All Programs

Summary

Personal Services \$21,843,041 and 257.25 FTE

Operating costs \$13,849,658

Total \$35,692,699

2019 Biennium – Change Packages

CHANGE PACKAGES FOR ALL PROGRAMS

2019 Biennium – Change Packages

Commission and Chief Administrator Program (P4)

2019 Biennium – Change Packages

Commission Support

COMMISSION SUPPORT

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Attorney	_____	_____	\$_____	\$_____
Admin	_____	_____	\$_____	\$_____

- May be subject to change.

Priority:

2019 Biennium – Change Packages

Chief Administrator Support

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Contract Management				
Payroll	1.00	1.00	\$105,000	\$105,000
Operating			5,902	1,480
Communications Director				
Payroll	1.00	1.00	\$105,000	\$105,000
Operating			5,902	1,480

- Payroll in both fiscal years includes salary, benefits and health insurance.
- Operating in FY 18 includes one-time office set up costs and ongoing costs. FY 19 includes only ongoing costs.
 - May be subject to change.

Priority:

2019 Biennium – Change Packages

Salary Adjustments

ADJUST MARKET FOR PROGRAM 4 POSITIONS

- Program requests \$_____ for FY 18 and \$_____ for FY 19 to cover market adjustments.

- May be subject to change.

Priority:

2019 Biennium – Change Packages

Rent Adjustments

RENT ADJUSTMENTS

- The agency requests \$100K in each fiscal year for office rent increases. All rent increase are in P4 and allocated to other programs as necessary.

- May be subject to change

Priority:

2019 Biennium – Change Packages

Vacancy Savings

VACANCY SAVINGS

- The agency is requesting that it be excluded from vacancy savings.
- The agency requests \$_____ in FY 18 and \$_____ in FY 19.

- May be subject to change

Priority:

2019 Biennium – Change Packages

Equipment

REPLACEMENT

- Change out the agency's current technology

- May be subject to change

Priority:

2019 Biennium – Change Packages

Furniture Replacement

REPLACE DESKS AND CHAIRS

- The agency has been in operation for 10 years. At its inception OPD made a large furniture order to outfit all offices. The furniture is near the end of its life cycle.
- Many of the desks and chairs from that initial purchase need to be replaced due to wear and tear.
- The agency estimates it needs \$200,000 in FY 18 to replace furniture in its offices.

- May be subject to change

Priority:

2019 Biennium – Change Packages

Time and Workload Study

- The agency requests one-time funding for the biennium of \$210,000 to contract for a time and workload study.

2019 Biennium – Change Packages

Replace Vision Net Machines

- The agency requests one-time funds of \$25,000 to replace five Vision Net machines. These machines allow attorneys to meet with clients via video conference which saves travel and labor expenses. The current machines are obsolete and not covered under a maintenance agreement.

2019 Biennium – Change Packages

Public Defender Program (P1)

2019 Biennium – Change Packages

Challenge – Staffing Needs

- A substantial increase in new cases assigned to Program 1 has not been matched by a commensurate increase in staff and resources. As a result, attorneys are burdened with excessive workloads, which may result in representation lacking in quality or in a breach of professional obligations.
- Program 1 lacks sufficient administrative staff to adequately support attorneys (which would allow attorneys to focus on providing representation), or to perform other vital administrative tasks and enhance the agency's productivity.
- Program 1 lacks the resources to provide appropriate investigative services in felony or misdemeanor cases, or in the various types of civil cases to which OPD is assigned. The state's investigative resources typically far outmatch the resources OPD can provide in a case.

2019 Biennium – Change Packages

New FTE: Address Excess Case Weights Currently In The System

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Attorney				
Payroll	39.00	39.00	\$3,261,180	\$3,261,180
Operating			239,538	67,080
Legal Secretary				
Payroll	12.00	12.00	\$620,616	\$620,616
Operating			70,824	17,760
Investigator				
Payroll	5.00	5.00	\$364,620	\$364,620
Operating			29,510	7,400

- Payroll in both fiscal years includes salary, benefits and health insurance.
- Operating in FY 18 includes one-time office set up costs and ongoing costs. FY 19 includes only ongoing costs.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

New FTE – To Address Future Caseload Growth

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Attorney				
Payroll	4.00	9.00	\$334,480	\$752,580
Operating			24,568	37,590
Legal Secretary				
Payroll	1.00	3.00	\$620,616	\$620,616
Operating			5,902	13,284
Investigator				
Payroll	0.00	1.00	\$0	\$72,924
Operating			0	5,902

- Payroll in FY 18 includes salary, benefits and health insurance for only the requested FTE in that fiscal year.
- Payroll in FY 19 includes salary, benefits and health insurance for not only the FTE requested in FY 18 but also for new FTE requested in FY 19.
- Operating in FY 18 includes one-time office set up costs and ongoing costs for FTE requested in that fiscal year.
- Operating in FY 19 includes not only ongoing costs for the FTE requested in FY 18 but also one-time office set up costs and ongoing costs for new FTE requested in FY 19.
- This addresses the 5-year average caseload growth rate of 3.5% per year or about 1250 additional new cases/year.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

Challenge – Salaries

- Program 1 must keep its employees' salaries in line with those who do similar work to avoid suffering excessive turnover. Turnover disrupts client services and the flow of the justice system.
- Turnover in some positions continues to be excessive in this workforce, running in the double digits.
- Most non-attorney employees are being paid using 2014 markets; however, there are some positions that were not brought up fully to this market due to a lack of funding.

2019 Biennium – Change Packages

Salary Adjustments

ADJUST MARKET AND CAREER LADDER FOR ATTORNEY POSITIONS *and*
ADJUST MARKET FOR NON-ATTORNEY POSITIONS

- Program 1 requests \$_____ for FY 18 and \$_____ for FY 19 to cover attorney market adjustment.
 - Estimates for the market adjustment have traditionally been based on a study prepared by a team comprised of agency management and representatives from the attorneys' union. The results of this study should be available in early August of 2016. The study looks at salaries for similar positions held by attorneys employed by various county attorney offices throughout the state. This action will keep OPD's attorney salaries in line with those that provide similar services. The estimate may also include adjustments for attorneys that are managers as any increase in the staff attorney ladder creates pay compression.
 - Non-attorney market adjustment – key to 2016 markets
 - Program 1 requests \$300K for FY 18 and \$450K for FY 19 to cover attorney movement within the ladder. This does not include a market adjustment.
 - Program 1 requests \$_____ for FY 18 and \$_____ for FY 19 to cover manager pay compression. This will depend on the new market for the staff attorney workforce.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

Challenge – Death Penalty Defense

- Program 1 continues to represent those facing the death penalty if convicted. These cases tend to be both lengthy and costly as they go through both trial and appeal phases.
- The death penalty may be imposed upon conviction of certain offenses. Death penalty cases are highly specialized, and require extraordinary efforts on behalf of the accused. Compensation necessary to adequately fund death penalty cases would decimate the agency's base funding.
- Program 1 requests \$500K for FY 18 and \$500K for FY 19 to pay for costs related to death penalty cases.

Priority:

2019 Biennium – Change Packages

Challenge – Contract Services

- Program 1 relies on the active participation of private attorneys as a resource when staff attorney caseloads are sufficiently high, and when an attorney's duty of loyalty to a client precludes that attorney from representing another person in the case. Program 1 relies heavily on private attorneys in dependent/neglect cases, which pose an internal conflict of interest between parents and children. These cases typically remain open for more than a year. Past Legislatures have provided increased funding for using contracted services, as opposed to adding staff attorneys. Thus, contract costs continue to grow, and the base level of contract expenditures needs to grow as well.
- Program 1 endeavors to ensure that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state. The hourly rate for contract attorney services is below the market rate. This low hourly rate impacted Program 1's ability to recruit and retain contract attorneys.

Priority:

2019 Biennium – Change Packages

Contract Case Increase

INCREASE FUNDS FOR ADDITIONAL CONTRACT WORK, INCLUDING EXPERTS

Contract Costs

<u>FY 18 Costs</u>	<u>FY 19 Costs</u>
--------------------	--------------------

\$137,000	\$278,000
-----------	-----------

The agency requests that the contract budget be increased by the 5-year average increase of 3.5% of \$3.9 million per year.

- May be subject to change

Priority:

2019 Biennium – Change Packages

Increase Contract Attorney Rate

Contract Costs

<u>FY 18 Costs</u>	<u>FY 19 Costs</u>
--------------------	--------------------

\$1,638,000	\$1,695,000
-------------	-------------

- The Commission's Contracts Committee conducted an analysis in 2013 of hourly rates paid to contract attorneys in other states, federal defenders, private attorneys and other Montana state agencies. They use these rates to develop a blended rate.
 - The blended rate was discounted to reflect public service and guaranteed timely payments by the state.
 - The Committee's recommended rate was \$87.64 per hour or \$88 rounded.
 - The current rate is \$62/hour.
 - To raise the rate by \$26/hr. the agency would need \$4.2 million in both FY 18 and FY 19. The average cost per dollar increase is about \$63,000.
 - FY 2019 is increased by 3.5%
- May be subject to change

Priority:

2019 Biennium – Change Packages

Program 1 – Challenge – Eligibility Determination

- Currently, Program 1 has 11 staff members whose duties include evaluating the financial eligibility of thousands of persons who apply for representation. These staff serve as gatekeepers for our services, and help the agency use taxpayers' funds efficiently and productively. Additional staff to perform this function would enhance the thoroughness of eligibility determinations, might help curb caseloads by controlling the inflow of new cases, and enable Program 1 to focus attention on those who truly qualify for public defender services.
- Program 1 issued a Request for Proposal (RFP) to have this function performed by a contractor. No bids were received in response to the RFP.

2019 Biennium – Change Packages

New FTE - ELIGIBILITY DETERMINATION SPECIALISTS

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Eligibility Assistants				
Payroll	5.00	5.00	\$268,335	\$268,335
Operating			29,510	7,400

- Payroll in both fiscal years includes salary, benefits and health insurance.
 - Operating in FY 18 includes one-time office set up costs and ongoing costs. In FY 19 it includes only ongoing costs.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

New FTE – RESOURCE ADVOCATES

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Resource Advocates				
Payroll	5.00	5.00	\$303,215	\$303,215
Operating			29,510	7,400

- Payroll in both fiscal years includes salary, benefits and health insurance.
 - Operating in FY 18 includes one-time office set up costs and ongoing costs. FY 19 includes only ongoing costs.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

Challenge-Managers' Caseloads

- Attorneys that are also managers need time to manage effectively, to provide adequate supervision and mentoring, and tend to administrative functions. Managers with high caseloads of their own cannot do so.

Priority:

2019 Biennium – Change Packages

New FTE – Address Manager Caseloads

ELIMINATE OR REDUCE CASELOADS FOR AGENCY MANAGERS

- If Program 1 were to reduce managers' caseloads to comply with its internal policy, it would need to hire 9.00 FTE positions and provide office space, furniture, computer, and communication equipment, training, travel, etc.

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Attorney				
Payroll	6.00	6.00	\$501,720	\$501,720
Operating			36,852	10,320
Legal Secretary				
Payroll	2.00	2.00	\$103,436	\$103,436
Operating			11,804	8,880
Investigator				
Payroll	1.00	1.00	\$72,924	\$72,924
Operating			5,902	1,480

- Payroll in both fiscal years includes salary, benefits and health insurance.
- Operating in FY 18 includes one-time office set up costs and ongoing costs. FY 19 includes only ongoing costs.
 - May be subject to change.

Priority:

2019 Biennium – Change Packages

Contingency Case Growth Funding

- Develop a change package that provides additional funding to the program if the actual caseload growth rates in fiscal 2018 and 2019 are above those used in the EPP process.

2019 Biennium – Change Packages

Conflict Coordinator (P3)

2019 Biennium – Change Packages

Challenge – Salaries

- Program 3 must keep its employees' salaries in line with those who do similar work to avoid suffering excessive turnover. Turnover disrupts client services and the flow of the justice system.

2019 Biennium – Change Packages

Salary Adjustments

ADJUST MARKET AND CAREER LADDER FOR ATTORNEY POSITIONS *and*
ADJUST MARKET FOR NON-ATTORNEY POSITIONS

- Program 3 requests \$_____ for FY 18 and \$_____ for FY 19 to cover attorney market adjustment.
 - Estimates for the market adjustment have traditionally been based on a study prepared by a team comprised of agency management and representatives from the attorneys' union. The results of this study should be available in early August of 2016. The study looks at salaries for similar positions held by attorneys employed by various county attorney offices throughout the state. This action will keep OPD's attorney salaries in line with those that provide similar services. The estimate may also include adjustments for attorneys that are managers as any increase in the staff attorney ladder creates pay compression.
 - Non attorney market adjust – key to 2016 markets =
 - Program 3 requests \$30K for FY 18 and \$45K for FY 19 to cover attorney movement within the ladder. This does not include a market adjustment.
 - Program 3 requests \$_____ for FY 18 and \$_____ for FY 19 to cover manager pay compression. This will depend on the new market for the staff attorney workforce.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

Death Penalty Defense

- The agency has a request for funding for this activity in Program 1. Funds would be transferred from P1 to P3 if P3 receives one of these cases.

Priority:

2019 Biennium – Change Packages

Challenge – Contract Services

- Program 3 relies on the active participation of private attorneys as a resource when staff attorney caseloads are sufficiently high, and when an attorney's duty of loyalty to a client precludes that attorney from representing another person in the case. Program 3 relies heavily on private attorneys in dependent/neglect cases, which pose an internal conflict of interest between parents and children. These cases typically remain open for more than a year. Past Legislatures have provided increased funding for using contracted services, as opposed to adding staff attorneys. Thus, contract costs continue to grow, and the base level of contract expenditures needs to grow as well.
- Program 3 endeavors to ensure that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state. The hourly rate for contract attorney services is below the market rate. This low hourly rate impacted Program 3's ability to recruit and retain contract attorneys.

Priority:

2019 Biennium – Change Packages

Contract Case Increase

INCREASE FUNDS FOR ADDITIONAL CONTRACT WORK, INCLUDING EXPERTS

Contract Costs

<u>FY 18 Costs</u>	<u>FY 19 Costs</u>
--------------------	--------------------

\$3,600,000	\$3,700,000
-------------	-------------

The agency requests that the contract budget be increased to cover the FY 2017 supplemental and adds 3.5% per year to recognize the historical caseload increase.

- May be subject to change

Priority:

2019 Biennium – Change Packages

Increase Contract Attorney Hourly Rate

Contract Costs

<u>FY 18 Costs</u>	<u>FY 19 Costs</u>
--------------------	--------------------

\$2,700,000	\$2,800,000
-------------	-------------

- The Commission's Contracts Committee conducted an analysis in 2013 of hourly rates paid to contract attorneys in other states, federal defenders, private attorneys and other Montana state agencies. They uses these rates to develop a blended rate.
 - The blended rate was discounted to reflect public service and guaranteed timely payments by the state.
 - The Committee's recommended rate was \$87.64 per hour or \$88 rounded.
 - The current rate is \$62/hour.
 - To raise the rate by \$26/hr. the agency would need \$4.2 million in both FY 18 and FY 19. The average cost per dollar increase is about \$63,000.
 - FY 2019 is increased by 3.5%
- May be subject to change

Priority:

2019 Biennium – Change Packages

Challenge – Staffing Needs

- A substantial increase in new cases assigned to Program 3 has not been matched by a commensurate increase in staff and resources. As a result, attorneys are burdened with excessive workloads, which may result in representation lacking in quality or in a breach of professional obligations.
- Program 3 lacks sufficient administrative staff to adequately support attorneys (which would allow attorneys to focus on providing representation), or to perform other vital administrative tasks and enhance the agency's productivity.

2019 Biennium – Change Packages

New FTE – Address Future Caseload Growth

ADDRESS INCREASED CASELOADS IN THE CONFLICT AREA

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY 19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Attorney				
Payroll	6.00	12.00	\$501,720	\$1,003,440
Operating			36,852	47,172
Legal Secretary				
Payroll	1.00	3.00	\$51,718	\$155,154
Operating			5,902	13,284
Investigator				
Payroll	1.00	1.00	\$72,924	\$72,924
Operating			5,902	1,480

- Payroll in FY 18 includes salary, benefits and health insurance for only the requested FTE in that fiscal year.
 - Payroll in FY 19 includes salary, benefits and health insurance for not only the FTE requested in FY 18 but also for new FTE requested in FY 19.
 - Operating in FY 18 includes one-time office set up costs and ongoing costs for FTE requested in that fiscal year.
 - Operating in FY 19 includes not only ongoing costs for the FTE requested in FY 18 but also one-time office set up costs and ongoing costs for new FTE requested in FY 19.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

Contingency Case Growth Funding

- Develop a change package that provides additional funding to the program if the actual caseload growth rates in fiscal 2018 and 2019 are above those used in the EPP process.

2019 Biennium – Change Packages

Appellate Defender Program (P2)

2019 Biennium – Change Packages

Challenge – Salaries

- Program 2 must keep its employees' salaries in line with those who do similar work to avoid suffering excessive turnover. Turnover disrupts client services and the flow of the justice system.

2019 Biennium – Change Packages

Salary Adjustment

ADJUST MARKET AND CAREER LADDER FOR ATTORNEY POSITIONS *and*
ADJUST MARKET FOR NON-ATTORNEY POSITIONS

- Program 2 requests \$_____ for FY 18 and \$_____ for FY 19 to cover attorney movement within the ladder. This does not include a market adjustment.
 - Estimates for the market adjustment have traditionally been based on a study prepared by a team comprised of agency management and representatives from the attorneys' union. The results of this study should be available in early August of 2016. The study looks at salaries for similar positions held by attorneys employed by various county attorney offices throughout the state. This action will keep OPD's attorney salaries in line with those that provide similar services. The estimate may also include adjustments for attorneys that are managers as any increase in the staff attorney ladder creates pay compression.
 - Program 2 requests \$30K for FY 18 and \$45K for FY 19 to cover attorney movement within the ladder. This does not include a market adjustment.
 - Program 2 requests \$_____ for FY 18 and \$_____ for FY 19 to cover manager pay compression.
 - Program 2 requests \$_____ for FY 18 and \$_____ for FY 19 for a market adjustment to the _____ market for its non-attorney positions.
- May be subject to change.

Priority:

2019 Biennium – Change Packages

Challenge-Staffing Needs

- Administrative Support Staff

Program 2 requires additional support staff in order to function competently. Lack of administrative staff has caused the Chief Appellate Defender, as well as Assistant Appellate Defenders, to perform secretarial tasks thereby reducing time available for legal analysis.

- Attorney Staff

High caseloads continue to burden Program 2 causing appellate defenders to suffer workloads that exceed its case weighting system as well as ethical limitations. Historical caseload rate is 9% per year.

2019 Biennium – Change Packages

New FTE – Address Future Caseload Growth

<u>Position</u>	<u>FY 18 FTE</u>	<u>FY19 FTE</u>	<u>FY 18 Cost</u>	<u>FY 19 Cost</u>
Attorney				
Payroll	1.00	2.00	\$83,620	\$167,240
Operating			6,142	7,862
Legal Secretary				
Payroll	1.00	1.00	\$51,718	\$51,718
Operating			5,902	1,480

- Payroll in FY 18 includes salary, benefits and health insurance for only the requested FTE in that fiscal year.
- Payroll in FY 19 includes salary, benefits and health insurance for not only the FTE requested in FY 18 but also for new FTE requested in FY 19.
- Operating in FY 18 includes one-time office set up costs and ongoing costs for FTE requested in that fiscal year.
- Operating in FY 19 includes not only ongoing costs for the FTE requested in FY 18 but also one-time office set up costs and ongoing costs for new FTE requested in FY 19.

- May be subject to change.

Priority:

2019 Biennium – Change Packages

Challenge – Contract Services

- Program 2 relies on the active participation of private attorneys as a resource when staff attorney caseloads are sufficiently high, and when an attorney's duty of loyalty to a client precludes that attorney from representing another person in the case. Program 2 relies heavily on private attorneys in dependent/neglect cases, which pose an internal conflict of interest between parents and children. These cases typically remain open for more than a year. Past Legislatures have provided increased funding for using contracted services, as opposed to adding staff attorneys. Thus, contract costs continue to grow, and the base level of contract expenditures needs to grow as well.
- Program 2 endeavors to ensure that appellate defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state. The hourly rate for contract attorney services is below the market rate. This low hourly rate impacted Program 2's ability to recruit and retain contract attorneys.

Priority:

2019 Biennium – Change Packages

Contract Case Increase

INCREASE FUNDS FOR ADDITIONAL CONTRACT WORK, INCLUDING EXPERTS

Contract Costs

<u>FY 18 Costs</u>	<u>FY 19 Costs</u>
--------------------	--------------------

\$31,500	\$34,300
----------	----------

The agency requests that the contract budget be increased by the 5-year average rate increase 9%.

- May be subject to change

Priority:

2019 Biennium – Change Packages

Increase Contract Attorney Hourly Rate

Contract Costs

<u>FY 18 Costs</u>	<u>FY 19 Costs</u>
--------------------	--------------------

\$83,200	\$90,700
----------	----------

- The Commission's Contracts Committee conducted an analysis based on rates charged by others (including other states, federal defenders, private attorneys and other state agencies) and developed a blended rate.
 - The blended rate was discounted to reflect public service and guaranteed timely payments by the state.
 - The Committee's recommended rate is \$87.64 per hour or \$88 rounded.
 - The current rate is \$62/hour.
 - To raise the rate by \$26/hr. the agency would need \$X million in both FY 18 and FY 19. The average cost per dollar increase is about \$3,200.
- May be subject to change

Priority:

2019 Biennium – Change Packages

Contingency Case Growth Funding

- Develop a change package that provides additional funding to the program if the actual caseload growth rates in fiscal 2018 and 2019 are above those used in the EPP process.

2019 Biennium – Change Packages

END OF THE CHANGE PACKAGES